

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award by the Special Administrative Law Judge should be affirmed.

First, the Appeals Board finds that the wages from claimant's four part-time jobs should be aggregated to arrive at the average weekly wage used in computing benefits. K.S.A. 1991 Supp. 44-511(b)(7) provides as follows:

"The average gross weekly wage of an employee who sustains an injury by accident arising out of and in the course of multiple employment, in which such employee performs the same or a very similar type of work on a part-time basis for each of two or more employers, shall be the total average gross weekly wage of such employee paid by all the employers in such multiple employment."

Claimant worked for respondent as a mechanic on farm equipment. In other part-time employment he worked for three separate companies as a mechanic on oil pumping equipment. Claimant testified that he would change oil in a car or truck for respondent. For respondent and the other employers he did welding, adjusted and changed belts, greased the equipment, and made or fixed parts. In all four employments he used his own hand tools, jacks, drills, and grinders. Claimant acknowledged the work was not exactly the same but from our review of the record it appears that the similarities are sufficient to satisfy the statutory requirement that the work be "very similar." Accordingly, the Appeals Board finds the wages should be aggregated and the Administrative Law Judge's finding that claimant's average weekly wage is \$320.19 is hereby affirmed.

The Appeals Board also agrees with and affirms the finding that claimant is permanently and totally disabled. Although the record includes expert medical testimony indicating claimant has the physical capability of doing some kinds of sedentary or light occupations, the record as a whole convinces the Appeals Board that claimant is essentially and realistically unemployable. Wardlow v. ANR Freight Systems, 19 Kan. App. 2d 110, 872 P.2d 299 (1993). He was 68 years old at the time of the injury and has an eighth grade education. He had preexisting conditions which included heart problems and diabetes. Claimant's injury was severe. While changing the tire on a combine, the jack slipped and the combine fell on claimant's feet and legs. He suffered injuries to both feet, legs, his back and head. The injuries required multiple operations to his feet and ankles. The medical restrictions were substantially limiting. Dr. Eric E. Hansen, one of the treating physicians, recommended claimant avoid uneven surfaces, that he not climb, that he not use his feet for repetitive movement such as operating foot controls, and he limited his lifting to carrying 10 pounds frequently and 20 pounds occasionally in an 8-hour workday. He could drive a truck for as long as 60 minutes at a time. He recommended that claimant stand or walk a total of 2 hours at a time for a total of 2 to 4 hours in an 8-hour day.

Testimony of vocational experts substantiates the conclusion that claimant is permanently totally disabled. Mr. Lloyd Langston testified in his opinion, based upon Dr. Hansen's restrictions, claimant had lost 100 percent of his ability to perform work in the open labor market and 100 percent of his ability to earn a comparable wage. Jule Kuhn,

a counselor and placement coordinator for Manhattan Area Technical Center, testified that school is not a practical option for the claimant. Mr. Gary Ziegler, a rehabilitation specialist retained by respondent, testified that claimant did not have transferable skills that would enable him to perform work within his abilities. It was his opinion that there was no training or assistance that would return claimant to full employment.

For these reasons, and for the reasons stated in the Award by the Special Administrative Law Judge, whose findings are hereby incorporated as a part of this Award, the Appeals Board concludes that claimant's injuries resulted in permanent and total disability. The finding by the Special Administrative Law Judge on this issue should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey dated June 14, 1995, should be, and is hereby, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Walter C. Montgomery and against the respondent, CAP Farms, Inc., and its insurance carrier, Insurance Company of North America, for an accidental injury which occurred June 23, 1991, and based upon an average weekly wage of \$320.19 for permanent total disability compensation at the rate of \$213.47 per week not to exceed \$125,000.00.

As of October 31, 1996, there is due and owing claimant 279.57 weeks of permanent total compensation at the rate of \$213.47 per week or \$59,679.81, minus amounts previously paid.

The remaining \$65,320.19, is to be paid at the rate of \$213.47 per week until fully paid or further order of the Director.

Future medical benefits will be awarded only upon proper application to and approval of the Director. Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Kansas Workers Compensation Act are hereby assessed to the respondent to be paid directly as follows:

William F. Morrissey	\$ 150.00
Special Administrative Law Judge	
Nora Lyon & Associates	
Transcript of Preliminary Hearing	\$ 151.00

Appino & Biggs Reporting Service	
Transcript of Regular Hearing	\$ 237.60
Deposition of Louise Castor	\$ 92.45
Deposition of Lloyd D. Langston	\$ 175.80
Deposition of Eric Hansen, M.D.	\$ 87.90
 Gene Dolginoff Associates	
Deposition of Edward J. Prostic, M.D.	\$ 168.50
Deposition of G. Robert McClellan	\$ 501.60
 Dolores Eilts	
Deposition of Gary L. Ziegler	\$ 239.50
 Owens, Brake & Associates	
Deposition of Jule Kuhn	\$ 151.90
Deposition of Richard Baker, M.D.	\$161.45

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Marcia L. Yates, Kansas City, MO
John J. Bryan, Topeka, KS
William F. Morrissey , Special Administrative Law Judge
Philip S. Harness, Director